

ARTICLE 9  
GENERAL PROVISIONS

SECTION 9.01. *Non-Survival of Representations, Warranties and Agreements.* The representations, warranties and agreements in this Agreement shall terminate at the Effective Time or upon the termination of this Agreement pursuant to Section 7.01 hereof, as the case may be, except that (i) the agreements set forth in Article I, Sections 5.08, 5.10, 5.13, 5.17 and 5.19 hereof shall survive the Effective Time indefinitely, (ii) the agreements set forth in Sections 5.05(b), 7.02, 9.03 and 9.10 hereof shall survive termination indefinitely, (iii) any covenant or agreement of Voicestream and DT which by its terms contemplates performance after the Effective Time shall survive the Effective Time in accordance with its terms, and (iv) the representations and warranties made by Voicestream in this Agreement shall terminate at the earlier of the Effective Time and 12:00 midnight on the Bringdown Date, except that if the Permitted Stock Dividend is declared or paid after the Bringdown Date, then the representations and warranties made by Voicestream in clause (5) of the last sentence of Section 2.03(a) and in Section 2.05(a) to the extent either relates to the declaration or payment of the Permitted Stock Dividend shall terminate immediately after such payment.

SECTION 9.02. *Notices.* All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date of receipt and shall be delivered personally or mailed by registered or certified mail (postage prepaid, return receipt requested), sent by overnight courier or sent by telecopy, to the Parties at the following addresses or telecopy numbers (or at such other address or telecopy number for a Party as shall be specified by like notice):

(a) if to Voicestream:

Voicestream Wireless Corporation  
3650 131st Avenue S.E.  
Bellevue, Washington 98006

Attention: Alan R. Bender  
Facsimile: 425-586-8080

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019

Attention: Daniel A. Neff  
Facsimile: 212-403-2000

and a copy to:

Friedman Kaplan & Seiler LLP  
875 Third Avenue  
New York, New York 10022

Attention: Barry A. Adelman  
Facsimile: 212-355-6401

(b) if to DT or Merger Sub:

Deutsche Telekom AG  
140 Friedrich-Ebert Allee  
53113 Bonn  
Germany

Attention: Kevin Copp  
Facsimile: 49-228-181-44177

with a copy to:

Cleary, Gottlieb, Steen & Hamilton  
One Liberty Plaza  
New York, New York 10006

Attention: Robert P. Davis  
Facsimile: 212-225-3999

and a copy to:

Hengeler Mueller Weitzel Wirtz  
Trinkausstrasse 7  
D-40213 Düsseldorf  
Germany

Attention: Dr. Rainer Krause  
Facsimile: +49-211-83-04-170

SECTION 9.03. *Expenses.* Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses, except that those expenses incurred in connection with the printing of the Voicestream Proxy Statement and the Registration Statement, as well as the filing fees related thereto and any filing fee required in connection with the filing of Premerger Notifications under the HSR Act, shall be shared equally by Voicestream and DT.

SECTION 9.04. *Headings.* The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 9.05. *Severability.* If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, then all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the maximum extent possible.

SECTION 9.06. *Entire Agreement; No Third-Party Beneficiaries.* This Agreement, the DT Financing Agreements and the Confidentiality Agreement constitute the entire agreement and, except as expressly set forth herein, supersedes any and all other prior agreements and undertakings, both written and oral, among the Parties, or any of them, with respect to the subject matter hereof and, except for Section 5.08, or 5.17, is not intended to confer upon any person other than Voicestream, DT and, after the Effective Time their respective stockholders, any rights or remedies hereunder.

SECTION 9.07. *Assignment.* Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other party; *provided, however*, that (i) this Agreement may be assigned by DT to an entity treated as a corporation for U.S. federal income tax

purposes which owns more than 80% of the DT Ordinary Shares and which succeeds to all of the rights and obligations of DT under the Escrow Agency Agreement and (ii) this Agreement may be assigned by Merger Sub to an entity treated as a corporation for U.S. federal income tax purposes and which is a direct, wholly-owned subsidiary of the entity to which DT has assigned this Agreement pursuant to (i) above. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Anything in this Section 9.07 to the contrary notwithstanding, no assignment shall be permitted hereunder unless after such assignment Jones Day and/or Wachtell Lipton is able to issue the opinion required pursuant to Section 6.02(d) hereof.

**SECTION 9.08. *Governing Law.*** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed entirely within that State, without regard to the conflicts of laws provisions thereof.

**SECTION 9.09. *Submission to Jurisdiction; Waivers.*** Each of the parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement or for recognition and enforcement of any judgment in respect hereof brought by the other party hereto or its successors or assigns shall be brought and determined only in the United States District Court for the District of Delaware, or in the event (but only in the event) that such court does not have subject matter jurisdiction over such action or proceeding, in the courts of the State of Delaware. Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to serve in accordance with this Section 9.09, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (c) to the fullest extent permitted by the applicable law, that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper and (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

**SECTION 9.10. *Waiver of Immunity.*** DT agrees that, to the extent that it or any of its Subsidiaries or any of its property or the property of its Subsidiaries is or becomes entitled to any immunity on the grounds of sovereignty or otherwise based upon its status as an agency or instrumentality of the government from any legal action, suit or proceeding or from set-off or counterclaim relating to this Agreement from the jurisdiction of any competent court, from service of process, from attachment prior to judgment, from attachment in aid of execution, from execution pursuant to a judgment or an arbitral award or from any other legal process in any jurisdiction, it, for itself and its property, and for each of its Subsidiaries and its property, expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the subject matter hereof (including any obligation for the payment of money). DT agrees that the foregoing waiver is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 et seq. The foregoing waiver shall constitute a present waiver of immunity at any time any action is initiated against DT or any of its Subsidiaries with respect to this Agreement or the subject matter hereof (including any obligation for the payment of money).

**SECTION 9.11. *Counterparts.*** This Agreement may be executed in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused this amended and restated Agreement to be executed on February 8, 2001 by their respective officers thereunto duly authorized.

VOICESTREAM WIRELESS CORPORATION

By: /s/ JOHN W. STANTON

Name: John W. Stanton

Title: Chairman and Chief Executive Officer

DEUTSCHE TELEKOM AG

By: /s/ JEFFREY A. HEDBERG

Name: Jeffrey A. Hedberg

Title: Member of the Board of Management,  
International

By: /s/ KARL-GERHARD EICK

Name: Dr. Karl-Gerhard Eick

Title: Member of the Board of Management,  
Finance

BEGA, INC.

By: /s/ KARL-GERHARD EICK

Name: Dr. Karl-Gerhard Eick

Title: Director

By: /s/ JEFFREY A. HEDBERG

Name: Jeffrey A. Hedberg

Title: Director

**AGREEMENT AND PLAN OF MERGER**

**Dated as of August 26, 2000,**

**As Amended and Restated as of February 8, 2001**

**Among**

**Deutsche Telekom AG,**

**Powertel, Inc.**

**and**

**Bega II, Inc.**

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## AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER, dated as of August 26, 2000, as amended and restated as of February 8, 2001, among DEUTSCHE TELEKOM AG, an AKTIENGESELLSCHAFT organized and existing under the laws of the Federal Republic of Germany ("DT"), POWERTEL, INC., a Delaware corporation ("Powertel") and BEGA II, INC., a Delaware corporation formed by DT ("Merger Sub") (each a "Party" and, together, the "Parties").

### WITNESSETH:

WHEREAS, VoiceStream Wireless Corporation, a Delaware corporation ("VoiceStream"), and DT entered into an Agreement and Plan of Merger dated as of July 23, 2000 (as amended or modified from time to time, the "VoiceStream Merger Agreement"), providing for the acquisition of VoiceStream by DT (the "VoiceStream Merger") and VoiceStream and Powertel are entering into a separate merger agreement dated as of the date hereof (as amended or modified from time to time (the "Alternative Merger Agreement"), providing for the acquisition of Powertel by VoiceStream (the "Alternative Merger") if the VoiceStream Merger Agreement is terminated and certain other conditions are satisfied or waived;

WHEREAS, the Management Board (VORSTAND) and the Supervisory Board (AUFSICHTSRAT) of DT and the Board of Directors of Powertel have determined that it is fair to and in the best interests of their respective companies and stockholders to consummate the strategic combination transaction provided for in this Agreement and the other transactions contemplated hereby in accordance with the laws of their respective jurisdictions of organization and have authorized the execution and delivery of this Agreement;

WHEREAS, the Board of Directors of Merger Sub has determined that it is advisable and in the best interests of Merger Sub and its stockholder to consummate the strategic combination transaction provided for in this Agreement and has authorized the execution and delivery of this Agreement, and DT, as Merger Sub's sole current stockholder, has approved and adopted this Agreement;

WHEREAS, simultaneously with the execution and delivery of this Agreement and the Alternative Merger Agreement, as part of a single overall transaction, and to induce DT to enter into this Agreement, certain stockholders of Powertel are each entering into a stockholder agreement (collectively, the "Powertel Stockholder Agreements") with DT dated as of the date hereof;

WHEREAS, for United States federal income tax purposes the parties intend that the Merger (as defined below) will qualify (i) as a reorganization within the meaning of Section 368(a) of the Code (as defined below) and (ii) for an exception to the general rule of Section 367(a)(1) of the Code; and

WHEREAS, DT and Powertel desire to make certain representations, warranties, covenants and agreements in connection with the transactions contemplated by this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, DT, Powertel and Merger Sub hereby agree as follows:

## ARTICLE 1

### THE MERGER

SECTION 1.01. *Appointment of Escrow Agent and Formation of Merger Sub.* (a) Merger Sub is a corporation incorporated pursuant to Delaware Law and is a constituent company in the Merger. Except as provided in, or contemplated by, the last sentence of Section 1.01(b), DT owns 100 percent of the outstanding capital stock of Merger Sub.

(b) As soon as practicable after the date hereof, DT shall appoint a United States bank or trust company or other independent financial institution in the United States reasonably satisfactory to Powertel to act, inter alia, as escrow agent and exchange agent for the Merger and the delivery of the Merger Consideration (as defined below) to former stockholders of Powertel and the other Merger Consideration Recipients (as defined below) (the "**Escrow Agent**"). DT and Powertel shall enter into an escrow agency agreement with the Escrow Agent, in substantially the same form as the Escrow Agency Agreement to be entered into in connection with the VoiceStream Merger Agreement but with such changes as may be appropriate (the "**Escrow Agency Agreement**"), which agreement shall set forth the duties, responsibilities and obligations of the Escrow Agent consistent with the terms of this Agreement. Solely to accommodate the transactions described in this Article 1 and subject to the terms and conditions of the Escrow Agency Agreement, one day prior to the Effective Time DT shall cause the Escrow Agent to be registered, as DT's fiduciary (for the period prior to the Effective Time) as the record holder of all of the issued and outstanding shares of common stock, par value \$.000001 per share, of Merger Sub (the "**Merger Sub Common Stock**").

SECTION 1.02. *The Merger.* (a) Upon the terms and subject to the conditions of this Agreement and in accordance with Delaware Law, on the Closing Date (as defined below), Powertel will cause a certificate of merger (the "**Certificate of Merger**") to be executed and filed with the Secretary of State of the State of Delaware and make all other filings or recordings required by applicable law in connection with the Merger. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware or at such later time as is specified in the Certificate of Merger in accordance with Delaware Law (the "**Effective Time**").

(b) Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into Powertel in accordance with Delaware Law (the "**Merger**"), whereupon the separate existence of Merger Sub shall cease, Powertel shall be the surviving corporation in the Merger (the "**Surviving Corporation**") and shall continue to be governed by the laws of the State of Delaware, and the separate corporate existence of Powertel, with all its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger except as set forth in this Article 1. The Merger shall have the effects specified in Delaware Law.

SECTION 1.03. *The Closing.* On the later of (i) the fifth Business Day after the last to be fulfilled or waived of the conditions set forth in Article 6 hereof (other than the conditions contained in Sections 6.02(c), 6.02(d), 6.02(e), 6.03(c), 6.03(d) and 6.03(e) so long as it is reasonably apparent that such conditions and the condition contained in Section 6.01(b) will be able to be satisfied at the Closing) shall be fulfilled or waived in accordance with this Agreement, and (ii) May 31, 2001, the closing of the Merger (the "**Closing**") shall be held (but only after all of the conditions set forth in Article 6 shall have been satisfied or waived prior to the Effective Time) at such time as DT and Powertel shall agree (the "**Closing Date**") at the offices of Cleary, Gottlieb, Steen & Hamilton, New York, New York, unless this Agreement shall have been terminated and the transactions contemplated by this Agreement abandoned pursuant to Article 7 or unless another date, time or place is agreed to in writing by DT and Powertel.

SECTION 1.04. *The Merger Exchange.*

(a) Upon the terms and subject to the conditions of this Agreement and the Escrow Agency Agreement, as soon as possible after the Effective Time, (x) on the Closing Date, the Escrow Agent shall contribute, for the account of the former stockholders of Powertel, all of the issued and outstanding shares of the Surviving Corporation Common Stock (as defined below) to DT as a transfer in kind, and (y) DT shall deliver the Merger Consideration to the Escrow Agent for the account of (i) the former stockholders of Powertel, (ii) the Options Trustee (as defined in Annex 1.08(a)), (iii) the Warrants Trustee (as defined in Annex 1.05(h)), (iv) the Eliska Partners Shares Trustee (as defined in Annex 1.05(i)) and (v) the Dissenting Stockholders Trustee (as defined in Annex 1.12 below) (collectively, the "**Merger Consideration Recipients**"). DT and the Escrow Agent shall effect the foregoing in accordance with Sections 183 et seq. and 203 et seq. of the German Stock Corporation Act (AKTIENGESETZ) (the "**German Act**") by registering the increase of the DT stated share capital with the commercial register

(HANDELSREGISTER) for DT (the “**Commercial Register**”) as soon as possible after the Effective Time. In the event that, in connection with the performance of DT’s obligations in this Section 1.04(a), on or prior to the Closing Date the Management Board of DT passes a resolution to increase the issued capital of DT in accordance with Article 5(2) of the Articles of Association of DT by such number of shares as is equal to the number of shares to be delivered as part of the Merger Consideration, and the Supervisory Board shall have consented thereto, then (i) the Escrow Agent shall promptly subscribe for such new ordinary shares of DT (“**DT Ordinary Shares**”) to be issued as part of the Merger Consideration and shall promptly on the Closing Date make the contribution to DT referred to in the first sentence of this Section 1.04(a) and (ii) the Management Board and the chairman of the Supervisory Board shall as soon as possible thereafter file the application for registration of the implementation of the capital increase with the Commercial Register, with the effect that, on registration of the capital increase in the Commercial Register, such new DT Ordinary Shares shall by operation of law be held solely by the Escrow Agent for delivery to and for the benefit of the Merger Consideration Recipients. At the Effective Time, the obligations of DT and the Escrow Agent under this Section 1.04(a) shall be unconditional.

(b) Each share certificate (a “**Certificate**”) formerly representing any Powertel Stock (as defined below) (other than Excluded Powertel Shares (as defined below) and Dissenting Shares (as defined below)) shall thereafter represent only the right to receive the Merger Consideration as set forth in Section 1.05(b) and the right, if any, to receive pursuant to Section 1.09 cash in lieu of fractional DT Depositary Shares (as defined below) or fractional DT Ordinary Shares, as applicable, and any dividend or distribution pursuant to Section 1.06(f), in each case, without interest. The DT Ordinary Shares and the DT Depositary Shares issued as provided in Section 1.05 shall be of the same class and shall have the same rights as the currently outstanding DT Ordinary Shares and the currently outstanding DT Depositary Shares, respectively.

**SECTION 1.05. *Conversion and Exchange of Shares.*** At the Effective Time:

(a) Each share of common stock, par value \$0.01 per share, of Powertel (“**Powertel Common Stock**”) and Powertel Preferred Stock (as defined below) owned by DT or Powertel immediately prior to the Effective Time (each, an “**Excluded Powertel Share**”) shall, by virtue of the Merger, and without any action on the part of the holder thereof, no longer be outstanding, be cancelled and retired without payment of any consideration therefor and shall cease to exist.

(b) By virtue of the Merger and without any action on the part of the holder thereof (in each of the following cases other than Excluded Powertel Shares) and subject to the further provisions of this Section 1.05:

(i) each share of Powertel Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive 2.6353 validly issued, fully paid and nonassessable DT Ordinary Shares (the “**Common Stock Exchange Ratio**”);

(ii) each share of Powertel Series A Preferred Shares (as defined below) and Powertel Series B Preferred Shares (as defined below) issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive 121.9294 validly issued, fully paid and nonassessable DT Ordinary Shares (the “**Series A and B Preferred Exchange Ratio**”), provided, that if the Permitted Stock Dividend (as defined below) is declared and paid prior to the Effective Time, the Series A and B Preferred Exchange Ratio shall be 122.8439 (the “**Adjusted Series A and B Preferred Exchange Ratio**”);

(iii) each share of Powertel Series D Preferred Shares (as defined below) issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive 93.0106 validly issued, fully paid and nonassessable DT Ordinary Shares (the “**Series D Preferred Exchange Ratio**”), provided, that if the Permitted Stock Dividend is declared and paid prior to the Effective Time, the Series D Preferred Exchange Ratio shall be 93.7082 (the “**Adjusted Series D Preferred Exchange Ratio**”); and

(iv) each share of Powertel Series E Preferred Shares (as defined below) and Powertel Series F Preferred Shares (as defined below) issued and outstanding prior to the Effective Time shall be converted into the right to receive (A) 179.5979 validly issued, fully paid and non-assessable DT Ordinary Shares (the “**Series E and F Preferred Exchange Ratio**”), plus (B) a number of validly issued, fully paid and nonassessable DT Ordinary Shares equal to the product of the number of shares of Powertel Common Stock representing accrued or declared but unpaid dividends on such Powertel Series E Preferred Share or Powertel Series F Preferred Share (calculated as if the Closing Date were a dividend payment date), as the case may be, and the Common Stock Exchange Ratio, provided, that if the Permitted Stock Dividend is declared and paid prior to the Effective Time, the Series E and F Preferred Exchange Ratio shall be 180.9449 (the “**Adjusted Series E and F Preferred Exchange Ratio**”).

The consideration payable pursuant to this paragraph (b) is referred to herein as the “**Merger Consideration.**”

(c) Any DT Ordinary Shares constituting a portion of the Merger Consideration shall be delivered to the holders of Powertel Stock in the form of American depositary shares, each representing the right to receive one DT Ordinary Share (the “**DT Depositary Shares**”). The DT Depositary Shares may be evidenced by one or more receipts (“**DT ADRs**”) issued in accordance with the Deposit Agreement, dated as of November 18, 1996, as amended, among DT, Citibank N.A., as Depositary (the “**Depositary**”), and the holders and beneficial owners from time to time of DT ADRs, as it may be further amended from time to time (the “**Deposit Agreement**”). Notwithstanding the foregoing, each Person who is entitled to receive DT Ordinary Shares as Merger Consideration shall be entitled, with respect to all or any portion of his Powertel Stock, to make an unconditional and irrevocable election (the “**Ordinary Share Election**”) to receive DT Ordinary Shares in lieu of DT Depositary Shares. The Letter of Transmittal (as defined below) shall contain a form of Ordinary Share Election and shall be used by each holder of Powertel Stock who wishes to make an Ordinary Share Election.

(d) Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger, and without any action on the part of the holder thereof, no longer be outstanding, be cancelled and retired. Immediately following the Effective Time, the Surviving Corporation shall issue to the Escrow Agent a number of shares of common stock, par value \$0.000001 per share, of the Surviving Corporation (“**Surviving Corporation Common Stock**”) equal to the total number of Adjusted Fully Diluted Shares (as defined below) outstanding immediately prior to the Merger.

(e) In consideration of the contribution to DT by the Escrow Agent of Surviving Corporation Common Stock pursuant to Section 1.04(a) hereof, DT shall issue, in accordance with Section 1.04(a), and deliver to the Escrow Agent, the maximum number of DT Ordinary Shares (including DT Ordinary Shares underlying DT Depositary Shares that are to be delivered as part of the Merger Consideration) that has become payable pursuant to Section 1.05 for delivery to the Merger Consideration Recipients entitled thereto.

(f) If, between the date of this Agreement and the Effective Time, all of the outstanding DT Ordinary Shares, or more than 80% of the outstanding DT Ordinary Shares pursuant to an exchange offer for all outstanding shares, shall have been changed into or exchanged for a different number of shares or kind of shares of DT or another corporation or entity owning more than 80% of the DT Ordinary Shares, or the DT Ordinary Shares outstanding shall have changed, by reason of any reclassification, split-up, stock-split, reverse stock-split, stock dividend, stock combination, recapitalization or redenomination of share capital, merger or similar statutory procedure or pursuant to an exchange offer, or DT changes the number of DT Ordinary Shares represented by a DT Depositary Share, then the Common Stock Exchange Ratio, the Series A and B Preferred Exchange Ratio, the Series D Preferred Exchange Ratio, the Series E and F Preferred Exchange Ratio and the amount of any portion of the Merger Consideration that would otherwise be payable in DT Ordinary Shares and the issuer thereof and other definitions and provisions of this Agreement dependent thereon shall be appropriately adjusted.

(g) In the event that the aggregate number of shares of Powertel Common Stock and the Powertel Common Stock Equivalents (as defined below) ("**Adjusted Fully Diluted Shares**") exceeds the Maximum Share Amount (as defined below) as of the Effective Time, excluding, for purposes of this Section 1.05(g), Powertel Common Stock issuable after the date hereof and prior to the Effective Time in respect of dividends accrued on the Series E Preferred Shares and the Series F Preferred Shares, each of the Common Stock Exchange Ratio, the Series A and B Preferred Exchange Ratio, the Series D Preferred Exchange Ratio, the Series E and F Preferred Exchange Ratio, the Adjusted Series A and B Preferred Exchange Ratio, the Adjusted Series D Preferred Exchange Ratio and the Adjusted Series E and F Preferred Exchange Ratio shall be adjusted by multiplying each of the Common Stock Exchange Ratio, the Series A and B Preferred Exchange Ratio or the Adjusted Series A and B Preferred Exchange Ratio, as applicable, the Series D Preferred Exchange Ratio or the Adjusted Series D Preferred Exchange Ratio, as applicable, and the Series E and F Preferred Exchange Ratio or the Adjusted Series E and F Preferred Exchange Ratio, as applicable, by a fraction the numerator of which shall be the Maximum Share Amount and the denominator of which shall be the number of Adjusted Fully Diluted Shares as of the Effective Time. Except as described in the preceding sentence, the number of shares of Powertel Common Stock and Powertel Common Stock Equivalents for the purpose of such recalculation shall be determined in the same manner as described in **Schedule 2.03**, including the shares of Powertel Stock actually outstanding and shares of Powertel Stock issuable (i) in exchange for Powertel Preferred Stock, (ii) pursuant to Powertel Stock Options (as defined below) and Powertel Warrants (as defined below), (iii) pursuant to Powertel Restricted Stock Awards (as defined below), (iv) in connection with the Eliska Put Rights (as defined below) and (v) any other Powertel Common Stock and Powertel Common Stock Equivalents outstanding as of the Effective Time. For purposes of this Section 1.05(g), the "**Maximum Share Amount**" means 55,742,000 shares; *provided, however*, that if the Permitted Stock Dividend is paid prior to the Effective Time, the Maximum Share Amount shall mean instead 56,160,000 shares; *provided further, however*, that if prior to the Effective Time the Eliska Put (as defined below) or the Sonera Put (as defined below) shall have been terminated, the Maximum Share Amount shall be appropriately reduced.

(h) *Warrants.* If all the warrants (the "**Powertel Warrants**") to purchase Powertel Common Stock issued by Powertel pursuant to the Warrant Agreement (the "**Powertel Warrant Agreement**") dated February 7, 1996 between Powertel and Bankers Trust Company, as warrant agent, shall not have been exercised prior to the Effective Time and any holder of such Powertel Warrants becomes entitled to DT Ordinary Shares after the Effective Time, such DT Ordinary Shares to which such holder of Powertel Warrants is entitled will be issued from a U.S. trust, as described in Annex 1.05(h) (which shall be in form and substance reasonably satisfactory to DT and Powertel, the "**Warrants Trust**"), and to the extent any holder of Powertel Warrants becomes entitled to cash payment after the Effective Time, such cash payment to which such holder of Powertel Warrants is entitled will be paid by DT.

(i) *Eliska Partners.*

(i) To the extent that prior to the Effective Time, any of the Eliska Partners receives Powertel Common Stock in respect of its rights to sell its interest in the Eliska Joint Venture pursuant to (x) the Put Agreement dated May 30, 2000 between Powertel and Sonera Holding B.V. (the "**Sonera Put**") or (y) the Put Agreement dated May 30, 2000 between Powertel, Eliska Wireless Investors I, L.P. ("**Eliska**") and Sonera Holding B.V. (the "**Eliska Put**," and together with the Sonera Put, the "**Eliska Put Rights**"), such Eliska Partner shall have all the rights with respect to such Powertel Common Stock which a Powertel stockholder has.

(ii) To the extent that any of the Eliska Partners does not receive Powertel Common Stock prior to the Effective Time in respect of its Eliska Put Rights, such Eliska Partner shall be entitled to receive DT Ordinary Shares, DT Depositary Shares or cash as the case may be, pursuant to the Eliska Put Rights. To the extent that, on or after the Effective Time, an Eliska Partner is entitled to DT Ordinary Shares, such shares will be delivered from a U.S. trust, as described in Annex 1.05(i) (which shall be in form and substance reasonably satisfactory to DT and Powertel, the "**Eliska Partners Shares Trust**") and to the extent that such Eliska Partner is entitled to cash, such cash shall



be paid by DT. The consideration payable to an Eliska Partner pursuant to this clause (ii) shall not constitute Merger Consideration for the purpose of this Agreement.

(iii) Prior to the date hereof Powertel, DT and the Eliska Partners have entered into an agreement pursuant to which the Eliska Partners have consented to the assumption by DT of Powertel's obligations under the Eliska Put Rights and the treatment of the Eliska Put Rights as contemplated by this Agreement.

**SECTION 1.06. *Surrender and Payment.*** (a) Promptly after the Effective Time, DT shall cause the Surviving Corporation to send, or will cause the Escrow Agent to send, to each holder of record as of the Effective Time of Powertel Stock (other than holders of Excluded Powertel Shares) a letter of transmittal which shall specify that the delivery of Certificates shall be effected, and risk of loss and title shall pass, only upon proper delivery of a Certificate to the Escrow Agent, and instructions for use in effecting the surrender to the Escrow Agent of Certificates in exchange for the Merger Consideration (the "**Letter of Transmittal**"). The Letter of Transmittal shall contain such other terms and conditions as DT and Powertel may reasonably specify.

(b) Each record holder of any Powertel Stock (other than Excluded Powertel Shares) shall, upon surrender to the Escrow Agent of a Certificate or Certificates representing such shares of Powertel Stock, together with a properly completed Letter of Transmittal covering the Powertel Stock represented by such Certificate or Certificates, without further action, be entitled to receive, and the Escrow Agent shall deliver (and DT shall cause the Escrow Agent to deliver) to each such holder, subject to Section 1.06(e) below, (i) the number of whole DT Depositary Shares or DT Ordinary Shares included in the Merger Consideration in respect of such Powertel Stock, subject to the provisions of Section 1.05, and (ii) a check in the amount (after giving effect to any required tax withholdings) of (A) any cash in lieu of Fractional Interests (as defined below) to be paid pursuant to Section 1.09, plus (B) any cash dividends or other distributions that such holder has the right to receive pursuant to Section 1.06(f). Until so surrendered, each such Certificate shall, after the Effective Time, represent for all purposes only the right to receive the number of whole DT Depositary Shares or DT Ordinary Shares, as applicable, to which it is entitled pursuant to Section 1.05 and the applicable amounts of cash provided in the foregoing clause (ii) of the preceding sentence.

(c) If any DT Depositary Shares or DT Ordinary Shares are to be delivered to a Person other than the registered holder of the Powertel Stock represented by a Certificate or Certificates surrendered with respect thereto, it shall be a condition to such issuance that the Certificate or Certificates so surrendered shall be properly endorsed or otherwise be in proper form for transfer and that the Person requesting such delivery shall pay to the Escrow Agent any transfer or other taxes required as a result of such delivery to a Person other than the registered holder of such Powertel Stock or establish to the satisfaction of the Escrow Agent that such tax has been paid or is not payable.

(d) The stock transfer books of Powertel shall be closed after the close of trading on the National Market System (the "**Nasdaq**") on the trading day immediately prior to the Effective Time, and thereafter there shall be no further registration of transfers of Powertel Common Stock that were outstanding prior to the Effective Time except that such stock transfer books shall be updated to reflect the Permitted Stock Dividend, if paid after such books are otherwise closed. After the Effective Time, Certificates presented to the Surviving Corporation for transfer shall be cancelled and exchanged for the consideration provided for, and in accordance with the procedures set forth, in this Article 1.

(e) Any DT Ordinary Shares issued and delivered in respect of Powertel Stock pursuant to this Article 1 and any cash in lieu of Fractional Interests to be paid pursuant to Section 1.09, plus any cash dividend or other distribution that such holder has the right to receive pursuant to Section 1.06(f) that remains unclaimed by any holder of Powertel Stock six months after the Effective Time, shall be held by the Escrow Agent (or a successor agent appointed by DT) or shall be delivered to the Depositary upon the instruction of DT and held by the Depositary, in either case subject to the instruction of DT, in an account or accounts designated for such purpose. None of DT, Merger Sub, Powertel, the Surviving Corporation or the Exchange Agent shall be liable to any holder of Powertel Stock for any securities

delivered or any amount paid by the Depositary, the Escrow Agent or its nominee, as the case may be, to a public official which it is so required to pay under applicable abandoned property laws. Any cash remaining unclaimed by holders of Powertel Stock five years after the Effective Time (or such earlier date immediately prior to such time as such cash would otherwise escheat to or become property of any Governmental or Regulatory Authority or as is otherwise provided by any applicable Legal Requirement (as defined below)) shall, to the extent permitted by applicable Legal Requirements, become the property of the Surviving Corporation or DT, as DT may determine.

(f) No dividends or other distributions nor any voting rights with respect to securities of DT issuable to the Escrow Agent with respect to Powertel Stock shall be paid to or exercised by the holder of any unsurrendered Certificates until such Certificates are surrendered as provided in this Section. Subject to the effect of applicable Legal Requirements, upon such surrender, there shall be issued and/or paid to the holder of DT Depositary Shares or DT Ordinary Shares issued in exchange therefor, without interest and after giving effect to any required tax withholding, (A) at the time of such surrender, the dividends or other distributions payable with respect to such DT Depositary Shares or DT Ordinary Shares with a record date after the Effective Time and a payment date on or prior to the date of such surrender and not previously paid and (B) at the appropriate payment date, the dividends or other distributions payable with respect to such DT Depositary Shares or DT Ordinary Shares with a record date after the Effective Time but with a payment date subsequent to such surrender. For purposes of dividends or other distributions in respect of DT Depositary Shares or DT Ordinary Shares, all DT Depositary Shares and DT Ordinary Shares to be issued pursuant to the Merger shall be deemed issued and outstanding as of the Effective Time. Notwithstanding the foregoing, no dividends or other distributions nor any voting rights with respect to securities of DT issuable to the Escrow Agent for the account of the Options Trustee, the Warrants Trustee, the Eliska Partners Shares Trustee and the Dissenting Stockholders Trustee shall be paid to or exercised by any such trustees.

SECTION 1.07. *Permitted Stock Dividend.* Anything in this Agreement to the contrary notwithstanding, at any time prior to the Effective Time, Powertel may declare, and thereafter make, a pro rata distribution, including distribution of fractional shares, to the holders of the then outstanding Powertel Common Stock of 0.0075 of a share of Powertel Common Stock for each share of Powertel Common Stock outstanding on the record date for such action (the “**Permitted Stock Dividend**”), and the conversion or exercise terms of any Powertel Equity Rights (as defined below) that by its terms (as in effect on February 8, 2001 in the case of Powertel Equity Rights outstanding on February 8, 2001), adjusts as a result of such Permitted Stock Dividend (whether automatically, or upon the taking of any corporate action or action by the board of directors of Powertel or of any subsidiary of Powertel) shall be so adjusted. In the event that a Permitted Stock Dividend is paid, the exchange ratios for the exchange of Powertel preferred stock for DT Ordinary Shares will be adjusted as provided in Section 1.05(b)(ii)-(iv) above.

SECTION 1.08. *Treatment of Powertel Option Plans.* (a) Subject to the consummation of the Merger, immediately prior to the Effective Time, each outstanding Powertel Stock Option will be converted (and such Powertel Stock Option will be extinguished) into a right to acquire (each, a “**Powertel Rollover Option**”) from a U.S. trust, as described in Annex 1.08(a) (which shall be in form and substance reasonably satisfactory to DT and Powertel, the “**Options Trust**”) on the same terms and conditions as were applicable under the Powertel Stock Option (but taking into account any changes thereto, including any acceleration thereof, provided for in the option award or in the Powertel Stock Option Plans listed on **Schedule 1.08** and applicable to such Powertel Stock Options by reason of this Agreement or the transactions contemplated hereby) that number of DT Ordinary Shares (the “**Powertel Option Amount**”) determined by multiplying the maximum number of shares of Powertel Common Stock subject to such Powertel Stock Option by the Common Stock Exchange Ratio, rounded if necessary to the nearest whole DT Ordinary Share at an exercise price per DT Ordinary Share equal to the exercise price per share of Powertel Common Stock in effect with respect to such Powertel Stock Option immediately prior to the Effective Time divided by the Common Stock Exchange Ratio. In order to implement the conversion of the Powertel Stock Options described above, the arrangements set forth in Annex 1.08(a)

will be effected at the Effective Time. In the case of a Powertel Stock Option which is intended to be an incentive stock option under Section 422 of the Code, the adjustment in this Section 1.08 shall be modified if necessary to permit such Powertel Stock Option to continue to comply with Section 422 of the Code.

(b) To the extent that any Person would otherwise be entitled to receive a fraction of a DT Ordinary Share pursuant to this Section 1.08, such fraction shall be treated in accordance with Section 1.09.

(c) As soon as practicable after the Effective Time, DT shall cause to be delivered to the holders of Powertel Stock Options appropriate notices setting forth such holders' rights pursuant to the respective Powertel Stock Option Plans and agreements evidencing the grants of such Powertel Stock Options (including that, in connection with the Merger and to the extent provided by the terms of the Powertel Stock Option Plans award agreements thereunder, the Powertel Stock Options subject to change of control vesting have become fully vested).

(d) No later than the Effective Time, DT shall file or cause to be filed with the SEC a registration statement on an appropriate form or a post-effective amendment to a previously filed registration statement under the Securities Act with respect to the DT Ordinary Shares and DT Depositary Shares which are subject to the Powertel Rollover Options as provided in Section 1.08(a), and shall use reasonable best efforts to maintain the current status of the prospectus associated therewith, as well as to comply with any applicable state securities or "blue sky" laws for so long as such options remain outstanding.

**SECTION 1.09. *Fractional DT Depositary Shares and Fractional DT Ordinary Shares.*** No fraction of a DT Depositary Share or a DT Ordinary Share will be issued to holders of Powertel Stock, but each holder of Powertel Stock otherwise entitled to receive a fraction of a DT Depositary Share or DT Ordinary Share will be entitled to receive in accordance with the provisions of this Section 1.09 from the Escrow Agent a cash payment in lieu of such fraction of a DT Depositary Share or DT Ordinary Share, as applicable (each a "**Fractional Interest**") representing such holder's proportionate interest in the net proceeds from the sale by the Escrow Agent on behalf of all such holders of the aggregate of the fractions of DT Depositary Shares and DT Ordinary Shares which would otherwise be issued ("**Excess ADSs**" and "**Excess Shares**", respectively). The sale of the Excess ADSs and the Excess Shares by the Escrow Agent shall be executed on the New York Stock Exchange, Inc. (the "**NYSE**") and the Frankfurt Stock Exchange (the "**FSE**"), respectively, through one or more member firms of the NYSE or the FSE, as the case may be, and shall be executed in round lots to the extent practicable. Until the net proceeds of such sale or sales have been distributed to the holders of Powertel Stock otherwise entitled to receive Fractional Interests, the Escrow Agent will hold such proceeds in trust for such holders of Powertel Stock (the "**Powertel Stock Trust**"). DT shall pay all commissions, transfer taxes and other out-of-pocket transaction costs, including the expenses and compensation, of the Escrow Agent incurred in connection with such sale of the Excess ADSs and Excess Shares. The Escrow Agent shall determine the portion of the Powertel Stock Trust to which each holder of Powertel Stock shall be entitled, if any, by multiplying the amount of the aggregate net proceeds comprising the Powertel Stock Trust by a fraction, the numerator of which is the amount of Fractional Interests to which such holder of Powertel Stock is entitled and the denominator of which is the aggregate amount of Fractional Interests to which all holders of Powertel Stock are entitled. As soon as practicable after the determination of the amount of cash, if any, to be paid to holders of Powertel Stock in lieu of any Fractional Interests, the Escrow Agent shall make available such amounts to such holders of Powertel Stock without interest.

**SECTION 1.10. *The Surviving Corporation.*** (a) The certificate of incorporation of Powertel in effect at the Effective Time shall, by virtue of the Merger, be amended and restated as of the Effective Time to be identical to the certificate of incorporation of Merger Sub (except that Article 1 thereof shall read: "The name of the Corporation is Powertel, Inc." and, as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation until amended in accordance with applicable law).

(b) The bylaws of Merger Sub in effect at the Effective Time shall be the bylaws of the Surviving Corporation until amended in accordance with applicable law.

(c) The directors of Merger Sub and the officers of Powertel immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation, respectively, and such individuals shall serve in such positions until their successors shall have been duly elected and shall qualify.

SECTION 1.11. *Lost, Stolen or Destroyed Certificates.* In the event any Certificate shall have been lost, stolen or destroyed, upon the holder's compliance with the replacement requirements established by the Escrow Agent, including, if necessary, the posting by such Person of a bond in customary amount as indemnity against any claim that may be made against it with respect to such Certificate, the Escrow Agent will issue (or cause to be issued) in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration and any cash payable in lieu of Fractional Interests and any unpaid dividends or other distributions deliverable pursuant to Section 1.06(f) in respect of the Powertel Stock represented by such Certificate pursuant to this Agreement.

SECTION 1.12. *Dissenting Shares.* Series A, B, D, E and F Preferred Shares which are issued and outstanding immediately prior to the Effective Time and which are held by a holder who has not voted such shares in favor of the Merger, who shall have delivered a written demand for appraisal of such shares in the manner provided by Delaware Law and who shall not have effectively withdrawn or lost such right to appraisal as of the Effective Time ("**Dissenting Shares**"), shall be entitled to such rights (but only such rights) as are granted by Section 262 of the Delaware Law. Each holder of Dissenting Shares who becomes entitled to payment for such Dissenting Shares pursuant to Section 262 of the Delaware Law shall receive payment therefor from the Surviving Corporation in accordance with Delaware Law; *provided, however*, that (i) if any such holder of Dissenting Shares shall have failed to establish his entitlement to appraisal rights as provided in Section 262 of the Delaware Law, (ii) if any holder of Dissenting Shares shall have effectively withdrawn his demand for appraisal of such shares or lost his right to appraisal and payment for his shares under Section 262 of the Delaware Law or (iii) if neither any holder of Dissenting Shares nor the Surviving Corporation shall have filed a petition demanding a determination of the value of all Dissenting Shares within the time provided for the filing of such petition in Section 262 of the Delaware Law, such holder shall forfeit the right to appraisal of such Dissenting Shares and each such share shall be converted into the right to receive the Merger Consideration pursuant to Section 1.05(b). Powertel shall give DT prompt notice of any demands received by Powertel for appraisal of Powertel Preferred Stock and DT shall have the right to conduct all negotiations and proceedings with respect to such demands. Except with the prior written consent of DT, Powertel shall not make any payment with respect to, or settle or offer to settle, any such demands. To the extent holders of Dissenting Shares become entitled to DT Ordinary Shares after the Effective Time, such DT Ordinary Shares to which such holder of Dissenting Shares is entitled will be issued from the Dissenting Stockholder Trust described in Annex 1.12 (the "**Dissenting Stockholder Trust**").

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES OF POWERTEL

Except as disclosed in Powertel Filed SEC Documents (as defined below) and except as set forth in the Powertel disclosure schedules attached to this Agreement (it being agreed that disclosure of any item in the schedules shall be deemed disclosure with respect to any section of this Agreement to which the relevance of such item is reasonably apparent), Powertel hereby represents and warrants as of the date hereof to DT as follows:

SECTION 2.01. *Organization.* Each of Powertel and its Subsidiaries (collectively, the "**Powertel Subsidiaries**") is a corporation or limited liability company duly organized, validly existing and is in good standing (where such concept is applicable) under the laws of the jurisdiction of its incorporation or organization and has the requisite power and authority to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority could not reasonably be expected to have a Material Adverse Effect on Powertel or prevent or materially delay the consummation of the Merger. Powertel and each of the Powertel Subsidiaries is duly qualified or licensed to do business and is in good standing (where such concept is applicable) in each

jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing could not reasonably be expected to have a Material Adverse Effect on Powertel or prevent or materially delay the consummation of the Merger. Powertel has delivered to DT complete and correct copies of the Restated Certificate of Incorporation of Powertel and Restated By-laws of Powertel and has made available to DT the certificate of incorporation and by-laws (or similar organizational documents) of each of the Powertel Subsidiaries.

**SECTION 2.02. Subsidiaries.** **Schedule 2.02** lists each Powertel Subsidiary and any Investment Entity. All of the outstanding shares of capital stock of each Powertel Subsidiary that is a corporation have been validly issued and are fully paid and nonassessable. All of the outstanding shares of capital stock of each Powertel Subsidiary are owned by Powertel or by another Powertel Subsidiary free and clear of all Liens, except for Liens which are granted to secure indebtedness and are disclosed in **Schedule 2.02**. Except as set forth in **Schedule 2.02**, (i) Powertel and the Powertel Subsidiaries have no material ongoing obligations, agreements, commitments, rights, understandings or arrangements with respect to any Investment Entities, including funding obligations; and (ii) all Investment Interests are owned by Powertel or the Powertel Subsidiaries free and clear of all Liens. Except as set forth in **Schedule 2.02** and except for the capital stock owned by Powertel, directly or indirectly, in the Powertel Subsidiaries, neither Powertel nor any of the Powertel Subsidiaries owns, directly or indirectly, any capital stock or other ownership interest in any corporation, partnership, joint venture, limited liability company or other entity.

**SECTION 2.03. Capital Structure.** (a) The authorized capital stock of Powertel consists of 401,000,000 shares of capital stock of which 400,000,000 shares are authorized to be issued as Powertel Common Stock and 1,000,000 shares are authorized to be issued as Powertel Preferred Stock. As of the close of business on August 18, 2000, Powertel had 31,381,461 shares of Powertel Common Stock issued and outstanding (not including 33,165 shares of restricted stock issued under the Restricted Stock Plan). The series of Powertel Preferred Stock and the number of designated, issued and outstanding shares, the current conversion ratio and the number of shares of Powertel Common Stock issuable upon conversion as of the close of business on August 18, 2000 were as follows:

<u>Series</u>	<u>Designated, Issued and Outstanding Shares</u>	<u>Current Conversion Ratio(1)</u>	<u>Common Stock Equivalents</u>
Series A Convertible Preferred Stock ("Series A Preferred Shares") .....	100,000	46.26774	4,626,774
Series B Convertible Preferred Stock ("Series B Preferred Shares") .....	100,000	46.26774	4,626,774
Series C Convertible Preferred Stock ("Series C Preferred Shares") .....	—(2)	—	—
Series D Convertible Preferred Stock ("Series D Preferred Shares") .....	50,000	35.29412	1,764,706
Series E 6.5% Cumulative Convertible Preferred Stock ("Series E Preferred Shares")(3) .....	50,000	68.15084	3,407,542
Series F 6.5% Cumulative Convertible Preferred Stock ("Series F Preferred Shares")(3) .....	50,000	68.15084	3,407,542

(1) Subject to applicable adjustments set forth in the related Certificate of Designations.

(2) 50,000 shares initially designated as Series C Preferred Shares have been converted to Powertel Common Stock.

(3) The Series E Preferred Shares and Series F Preferred Shares bear cumulative dividends that accrue on a daily basis at an annual rate of 6.5% of the initial purchase price of such shares.

The Series A, B, C, D, E, and F Preferred Shares are hereinafter collectively referred to as the **"Powertel Preferred Stock"** and, with the Powertel Common Stock, the **"Powertel Stock"**. As of the close of business on August 18, 2000: (i) 56,438 shares of Powertel Common Stock were held by Powertel in treasury; (ii) an aggregate of 17,833,338 shares of Powertel Common Stock were reserved for issuance upon conversion of Powertel Preferred Stock; (iii) an aggregate of 2,152,602 shares of Powertel Common Stock were reserved for issuance upon exercise of outstanding stock options (the **"Powertel Stock Options"**) granted under the Amended and Restated 1991 Employee Stock Option Plan (the **"1991 Plan"**), the Amended Nonemployee Stock Option Plan (the **"Nonemployee Option Plan"**) and the 2000 Stock Option and Incentive Plan (the **"2000 Plan"**) and with the 1991 Plan and the Nonemployee Option Plan, the **"Powertel Stock Option Plans"**); (iv) 33,165 shares of Powertel Common Stock were reserved for issuance pursuant to outstanding Powertel Restricted Stock Awards granted under the 1995 Employee Restricted Stock Plan (the **"Restricted Stock Plan"**); (v) 3,446,340 shares of Powertel Common Stock remained available for issuance pursuant to future stock option grants and restricted stock awards under the 2000 Plan; (vi) 966,688 shares of Powertel Common Stock were reserved for issuance pursuant to outstanding Powertel Warrants, which have an exercise price of \$16.9546 per share, subject to adjustment; and (vii) an aggregate of 30,142 shares of Powertel Common Stock are reserved for accrued but unpaid dividends on the Series E Preferred Shares and Series F Preferred Shares. **Schedule 2.03** sets forth a complete and accurate schedule of all Powertel Stock Options and their respective shares, vesting schedules, exercise prices and expiration dates that are outstanding on the date hereof (*provided*, that with respect to Powertel employees below the director level, such list need only set forth the aggregate number of options with the weighted average exercise prices at which grants have been made and need not specify grants by grantee).

(b) Except as set forth above and in **Schedules 2.02** and **2.03** and except as a result of the Permitted Stock Dividend, as of the date hereof, no shares of Powertel Stock or shares of capital stock of any Powertel Subsidiary were issued, reserved for issuance or outstanding and there are no stock appreciation rights, phantom stock rights or other contractual rights the value of which is determined in whole or in part by the value of any capital stock (**"Powertel Stock Rights"**) of Powertel or any Powertel Subsidiary. The Powertel Preferred Stock, the Powertel Stock Options, the Powertel Warrants, the Eliska Put Rights, the Powertel Stock Rights and any other security convertible into, or exercisable or exchangeable for, Powertel Common Stock (each of which shall be determined on an as-if-converted, exercised or exchanged basis) are herein referred to as **"Powertel Common Stock Equivalents."** Each outstanding share of Powertel Stock is, and each share of Powertel Stock which may be issued pursuant to the Powertel Benefit Plans and the other agreements and instruments listed above will be, when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights. There are no outstanding bonds, debentures, notes or other indebtedness of Powertel or any Powertel Subsidiary having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which Powertel's stockholders may vote.

(c) Except as set forth above or in **Schedule 2.02** or **Schedule 2.03** and except as a result of the Permitted Stock Dividend, as of the date of this Agreement, there are no **"Powertel Equity Rights."** Powertel Equity Rights means securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind obligating Powertel or any of the Powertel Subsidiaries to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional shares of capital stock or other voting securities or Powertel Common Stock Equivalents or stock equivalents of any of the Powertel Subsidiaries or obligating Powertel or any of the Powertel Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking.

(d) Any increase in any existing Powertel Equity Rights arising from antidilution or similar adjustments resulting from the payment of the Permitted Stock Dividend will not, in the aggregate, on the date the Permitted Stock Dividend is declared and on the date it is paid, increase the number of shares of Powertel Common Stock subject to Powertel Equity Rights by more than 0.75%.

(e) Except as set forth in **Schedule 2.02** or **Schedule 2.03**, as of the date of this Agreement, there are no outstanding contractual obligations of Powertel or any of the Powertel Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock of Powertel or any of the Powertel Subsidiaries.

(f) Between August 18, 2000 and the date of this Agreement, no Powertel Common Stock or Powertel Common Stock Equivalents have been issued or granted, except issuances of Powertel Common Stock upon the exercise of Powertel Stock Options or Powertel Warrants outstanding on August 18, 2000, and grants of new Powertel Stock Options to new employees or employees granted promotion in the ordinary course of business, provided that such shares of Powertel Common Stock underlying such new Powertel Stock Options will not exceed 50,000 shares.

**SECTION 2.04. Authority.** The Board of Directors of Powertel, at a meeting duly called and held, duly adopted resolutions (i) approving this Agreement, the Merger and the Powertel Stockholder Agreements, (ii) determining that the Merger is fair to and in the best interests of Powertel's stockholders and (iii) recommending that Powertel's stockholders approve and adopt this Agreement. Powertel has requisite corporate power and authority to execute and deliver this Agreement and the other agreements to which it is a party that are referenced herein and, subject to the adoption and approval of this Agreement by (i) a majority of the votes entitled to be cast by the holders of all outstanding shares of Powertel Common Stock and Series A Preferred Shares, voting on an as-if-converted to Powertel Common Stock basis and voting together with the holders of Powertel Common Stock as a single class, and (ii) two-thirds of each class of the Series A Preferred Shares, Series B Preferred Shares, Series D Preferred Shares, Series E Preferred Shares and Series F Preferred Shares, each such class of preferred stock voting as a single class (collectively, the "**Powertel Stockholder Approval**"), to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Powertel and the consummation by Powertel of the Merger and of the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Powertel, subject to the Powertel Stockholder Approval. This Agreement has been duly executed and delivered by Powertel and (assuming the valid authorization, execution and delivery of this Agreement by DT ) constitutes the valid and binding obligation of Powertel enforceable against Powertel in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights and remedies generally, and (ii) is subject to general principles of equity (regardless of whether considered in a proceeding in equity or at law).

**SECTION 2.05 No Conflict; Required Filings and Consents.** (a) Except as set forth in subsection (b) below or as set forth in **Schedule 2.05**, the execution, delivery or performance (assuming such performance occurred on the date hereof) of this Agreement by Powertel and the consummation by Powertel of the transactions contemplated hereby will not, and if the Permitted Stock Dividend is declared or paid, on the date the Permitted Stock Dividend is declared and the date it is paid, such declaration or payment (including treatment of fractional shares), as the case may be, will not (i) violate or conflict with the Restated Certificate of Incorporation or Restated By-laws of Powertel or of the similar organizational documents of any of the Powertel Subsidiaries, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Powertel or any of the Powertel Subsidiaries is a party or by which any of their properties are bound, (iii) violate any law, court order, judgment, decree or regulation applicable to Powertel or any of the Powertel Subsidiaries or by which any of their respective properties are bound, or (iv) result in the creation or imposition of any Lien on any asset of Powertel or the Powertel Subsidiaries, except in the case of clauses (ii), (iii) or (iv) for violations, breaches or defaults that could not reasonably be expected to have a Material Adverse Effect on Powertel or prevent or materially delay the consummation of the Merger.

(b) Except for filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the Securities Act, state securities or "Blue Sky" laws, the Exchange Act, the Communications Act, the HSR Act, Council Regulation (EEC) No. 4064/89, if applicable,

Delaware Law, the rules, regulations and published decisions of the FAA, the FCC and state public utility or service commissions or similar agencies, or the rules and regulations of the Nasdaq or as specified in **Schedule 2.05** (collectively, **"Powertel Required Approvals"**), neither the execution, delivery or performance of this Agreement by Powertel nor the consummation by Powertel of the transactions contemplated hereby will require any filing with, or permit, authorization, consent or approval of, any Governmental or Regulatory Authority (except where the failure to obtain such permit, authorization, consent or approval or to make such filings could not reasonably be expected to have a Material Adverse Effect on Powertel or prevent or materially delay the consummation of the Merger).

**SECTION 2.06. SEC Filings; Financial Statements.** Powertel has filed with the SEC all documents required to be filed by it since January 1, 1997 under the Securities Act or the Exchange Act (the **"Powertel SEC Documents"**). As of their respective filing dates, the Powertel SEC Documents were prepared substantially in accordance with the requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date so filed, and at the time filed with the SEC (or if amended or superseded by a filing prior to the date hereof, then on the date of such filing) none of the Powertel SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of Powertel included in the Powertel SEC Documents have been prepared in accordance with GAAP (except in the case of the unaudited statements, as permitted by Form 10-Q under the Exchange Act) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of Powertel and the consolidated Powertel Subsidiaries as of the respective dates thereof and the consolidated results of operations and consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

**SECTION 2.07. Absence of Certain Changes or Events.** Except as disclosed in **Schedule 2.07** or in the documents filed by Powertel with the SEC and publicly available prior to the date of this Agreement (the **"Powertel Filed SEC Documents"**), since December 31, 1999, Powertel and the Powertel Subsidiaries have conducted their respective businesses in all material respects only in the ordinary course, consistent with past practices, and there has not been (i) any Material Adverse Change with respect to Powertel, (ii) any declaration, setting aside or payment of any dividend or other distribution with respect to its capital stock (other than regularly scheduled dividends on the Series E Preferred Shares and Series F Preferred Shares) or any redemption, purchase or other acquisition of any of its capital stock, (iii) any split, combination or reclassification of any of its capital stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or (iv) any change in accounting methods, principles or practices by Powertel affecting its assets, liabilities or business, except insofar as may have been required by a change in GAAP.

**SECTION 2.08. Information Provided by Powertel.** None of the information supplied or to be supplied by Powertel specifically for inclusion or incorporation by reference in (i) the DT Registration Statement or (ii) the proxy statement/prospectus (together with any amendments or supplements thereto, the **"Powertel Proxy Statement"**) relating to the Powertel Stockholders' Meeting (as defined below) and the prospectus included in the DT Registration Statement for the distribution of DT Ordinary Shares or DT Depositary Shares pursuant to the Merger, will, in the case of the DT Registration Statement, at the time it becomes effective, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or in the case of the Powertel Proxy Statement, at the time of the mailing of the Powertel Proxy Statement or the time of the Powertel Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The DT Registration Statement will comply (with respect to Powertel) as to form in all material respects with the requirements of the Securities Act, and the Powertel Proxy Statement will comply (with respect to Powertel) as to form in all material



respects with the requirements of the Exchange Act. None of the information supplied or to be supplied by or on behalf of Powertel for inclusion or incorporation by reference in the German Listing Prospectus will, at the time the German Listing Prospectus is published, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the information supplied or to be supplied by or on behalf of Powertel for inclusion or incorporation by reference in the auditor's report to be prepared pursuant to Section 183(3) of the German Act will, at the time the report is filed with the Commercial Register, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the information to be supplied by or on behalf of Powertel pursuant to Section 5.06(d) will contain any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Powertel makes no representation or warranty with respect to any information supplied by DT or any other Person who is not an Affiliate of Powertel that is contained in the DT Registration Statement, Powertel Proxy Statement, the German Listing Prospectus or the auditor's report to be prepared pursuant to Section 183(3) of the German Act.

**SECTION 2.09. *Permits; Compliance with Laws.*** (a) Each of Powertel and the Powertel Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, charters, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental or Regulatory Authority necessary for Powertel or any of the Powertel Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the "**Powertel Permits**"), except where the failure to have any of the Powertel Permits could not, individually or in the aggregate, have a Material Adverse Effect on Powertel, and, as of the date of this Agreement, no suspension or cancellation of any of the Powertel Permits is pending or, to the Knowledge of Powertel, threatened, except where the suspension or cancellation of any of the Powertel Permits could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Powertel. The business of Powertel and the Powertel Subsidiaries is not being conducted in violation of any applicable law, ordinance regulation, judgment, order or decree of any Governmental or Regulatory Authority ("**Legal Requirements**"), except for possible violations that could not reasonably be expected to have a Material Adverse Effect on Powertel or prevent or materially delay the consummation of the Merger. None of the representations made in this Section 2.09 are being made with respect to Environmental Laws.

(b) Except as set forth in **Schedule 2.09**:

(i) Powertel and each of the Powertel Subsidiaries holds, and is qualified and eligible to hold, all material licenses, permits and other authorizations issued or to be issued by the FCC to such entity for the operation of their respective businesses, all of which are set forth in **Schedule 2.09(b)(i)** (the "**Powertel FCC Licenses**"). Each of the Powertel FCC Licenses that is subject to restrictions under Section 310(b) of the Communications Act is held by a Powertel Subsidiary.

(ii) The Powertel FCC Licenses are valid and in full force and effect, and neither Powertel nor any of the Powertel Subsidiaries is or has been delinquent in payment on or in default under any installment obligation owed to the United States Treasury in connection with the Powertel FCC Licenses. As used herein, the term "full force and effect" means that (A) the orders issuing the Powertel FCC Licenses have become effective, (B) no stay of effectiveness of such orders has been issued by the FCC, and (C) the Powertel FCC Licenses have not been invalidated by any subsequent published FCC action.

(iii) All material reports and applications required by the Communications Act or required to be filed with the FCC by Powertel or any of the Powertel Subsidiaries have been filed and are accurate and complete in all material respects.

(iv) Powertel and the Powertel Subsidiaries are, and have been, in compliance in all material respects with, and the wireless communications systems operated pursuant to the Powertel FCC

Licenses are and have been operated in compliance in all material respects with, the Communications Act.

(v) There is not pending or, to Powertel's Knowledge, threatened as of the date hereof any application, petition, objection, pleading or proceeding with the FCC or any public service commission or similar body having jurisdiction or authority over the communications operations of Powertel or any of the Powertel Subsidiaries which is reasonably likely to result in the revocation, cancellation, suspension, dismissal, denial or any materially adverse modification of any Powertel FCC License or imposition of any substantial fine or forfeiture against Powertel or any of the Powertel Subsidiaries.

(vi) No facts are known to Powertel or the Powertel Subsidiaries which if known by a Governmental or Regulatory Authority of competent jurisdiction would present a substantial risk that any Powertel FCC License could be revoked, cancelled, suspended or materially adversely modified or that any substantial fine or forfeiture could be imposed against Powertel or any of the Powertel Subsidiaries.

(vii) Powertel and the Powertel Subsidiaries have not made any material misstatements of fact, or omitted to disclose any fact, to any Government Entity or in any report, document or certificate filed therewith, which misstatements or omissions, individually or in the aggregate, could reasonably be expected to subject any material Powertel FCC Licenses to revocation or failure to renew, except to the extent that such revocation or failure to renew would not have a Material Adverse Effect on Powertel or the transactions contemplated by this Agreement.

**SECTION 2.10. Tax Matters.** Except as set forth in **Schedule 2.10** or as would not have a Material Adverse Effect on Powertel: (i) Powertel and each of the Powertel Subsidiaries have timely filed (after taking into account any extensions to file) all Tax Returns required to be filed by them either on a separate or combined or consolidated basis; (ii) all such Tax Returns are correct in all respects and accurately disclose in all respects all Taxes required to be paid for the periods covered thereby; (iii) Powertel and the Powertel Subsidiaries have paid or caused to be paid all Taxes shown as due on such Tax Returns and all Taxes for which no Tax Return was required to be filed, and the financial statements contained in the Powertel SEC Documents reflect an adequate reserve as determined in accordance with GAAP for all material Taxes payable by Powertel and the Powertel Subsidiaries and not yet due (other than a reserve for deferred Taxes established to reflect timing differences between book and Tax treatment) for all taxable periods and portions thereof accrued through the date of such financial statements; (iv) none of Powertel or any Powertel Subsidiary has waived in writing any statute of limitations in respect of Taxes; (v) there is no action, suit, investigation, audit, claim or assessment that has been formally commenced or proposed to Powertel in writing with respect to Taxes of Powertel or any of the Powertel Subsidiaries where an adverse determination is reasonably likely; (vi) there are no Liens for Taxes upon the assets of Powertel or any Powertel Subsidiary except for Liens relating to current Taxes not yet due; (vii) all Taxes which Powertel or any Powertel Subsidiary is required by law to withhold or to collect for payment have been duly withheld and collected, and have been paid or accrued on the books of Powertel or such Powertel Subsidiary; (viii) neither Powertel nor any Powertel Subsidiary has been a member of any group of corporations filing Tax Returns on a consolidated, combined, unitary or similar basis other than each such group of which it is currently a member; (ix) no deduction of any amount that would otherwise be deductible by Powertel or any of the Powertel Subsidiaries with respect to taxable periods ending on or before the Effective Time could be disallowed under Section 162(m) of the Code; (x) neither Powertel nor any of the Powertel Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock qualifying for tax-free treatment under Section 355 of the Code (a) in the two years prior to the date of this Agreement or (b) in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the Merger; (xi) neither Powertel nor any of the Powertel Subsidiaries is a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code; (xii) neither Powertel nor DT will be obligated to make a payment, in connection with the transactions contemplated hereunder or otherwise, to any employee or former employee of, or individual providing services to, Powertel or Powertel Subsidiaries that would be a